IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3438 OF 2005

Swapnil Biraman Mokashi. ... Applicant.

Versus.

The State of Maharashtra. ... Respondent.

Shri K.M.Makasare for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent-State.

Mrs.Revati Mohite Dere for complainant.

CORAM : ABHAY S. OKA, J.

DATED : 17th June, 2005.

P.C.:

1. Offence has been registered against the Applicant under sections 465, 467, 468, 471, 420 read with section 34 of the Indian Penal Code. The allegation against the Applicant and the other Accused is that they have defrauded a Bank by producing fabricated documents. An Application for anticipatory bail filed by the Applicant in the Sessions Court was rejected. Time was granted in favour of the Applicant by the learned Additional Sessions Judge to surrender till 18th December 2004. This Application is filed in this Court on 29th April 2005.

2. An affidavit has been filed by S.S.Bhoite, Police Sub-Inspector attached to the Economic Offence Wing, Unit of G.B.C.B. C.I.D. In the said affidavit it is stated that after 13th December 2004 the Applicant has

not attended the office of the Investigating Officer and he is absconding and thus he is not cooperating with the investigating authorities. It is stated in the affidavit that the Applicant is the prime accused in the case and during investigation it is transpired that the Applicant had prepared many forged documents and also made forged signatures on the cheque. It is contended that considering the magnitude of the offence, custodial interrogation of the Applicant is necessary.

3. The learned Counsel appearing for the Applicant has invited my attention to the affidavit-in-rejoinder filed by the Applicant. It is not disputed that after 13th December 2004 he has not attended the office of the Investigating Officer. It is stated in the affidavit that the Applicant went into depression by the very thought of surrendering and he was being treated by the Doctor for ante-depression condition. It is stated that he has taken up a job with a company as Customer Service Representative and he has been attending the job. It is stated that earlier he has attended the office of the Investigating Officer and his father, who is also an accused, has been attending the office.

4. He submitted that the concerned Bank is already prosecuting the Applicant under section 138 of the Negotiable Instruments Act and since all the documents are in possession of the Investigating Agency, custodial

interrogation is not required.

5. I have considered the submissions. It is not in dispute that the time granted by the learned Additional Sessions Judge to the Applicant to surrender has expired on 18th December 2004 and thereafter the Applicant did not surrender. The present Application is filed on 29th April 2005. Considering the facts of the case, this Court has not granted any ad-interim relief in favour of the Applicant. The explanation given in the affidavit filed by the Applicant is that he was suffering from depression. Reliance is placed on the certificate issued by the Medical Practitioner which is annexed to the said affidavit. The certificate is dated 16th June 2005. There is no certificate produced for the months of December or January. The alleged letter of appointment of the Applicant issued to the Applicant by the Superland Global Services Pvt.Ltd. is of February 22, 2005 and annexure to it shows that the date of joining is 7th March 2005. Thus nothing prevented the Applicant from surrendering atleast from first week of March 2005. Therefore, the explanation which is tried to be offered by the Applicant for not surrendering cannot be accepted.

6. In the circumstances, at this stage it is very difficult to reject the assertion of the prosecution that the Applicant has been absconding from 18th

December 2004. Considering the magnitude of the offence and considering the fact that large amount of Rs.76,00,000/- is involved in the crime, there is no reason to reject the contention of the prosecution that the custodial interrogation of the Applicant is required. Hence there is no merit in the Applicant.

The Application is rejected.

7. At this stage the learned Counsel appearing for the Applicant prays that time of 7 days be granted to surrender. Since the assertion of the prosecution that the Applicant is absconding has been accepted, the prayer made cannot be considered.

Judge.